

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

March 2, 2009

TO: Internal File

THRU: Steve Christensen, Lead

SKC

WW 3/2/09

DS 03/02/09

FROM: Ingrid Wieser, Environmental Scientist II

RE: Chapter 3- Raptor Survey Revisions, Canyon Fuel Company, Dugout Canyon Mine, C/007/0039, Task ID # 3218

SUMMARY:

On February 10, 2009, Canyon Fuel Company LLC submitted an amendment to the Division requesting to update the raptor survey information in the Mining and Reclamation Plan for Dugout Canyon Mine. These changes were initiated in response to the letter from Division of Wildlife Resources, which stated that they would no longer be participating in raptor surveys and private consultants should be hired for future surveys. The Permittee seeks to update raptor survey information in Chapter 3 of the Mining and Reclamation Plan, Chapter 3 of the Degassification Well Amendment, Chapter 3 of the Refuse Pile Amendment and Appendix 3-3 of Chapter 3 Confidential Folder.

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TECHNICAL ANALYSIS:

OPERATION PLAN

FISH AND WILDLIFE INFORMATION

Regulatory Reference: 30 CFR Sec. 784.21, 817.97; R645-301-322, -301-333, -301-342, -301-358.

Analysis:

Bald and Golden Eagles

Revision to MRP Chapter 3: The changes submitted by the Permittee are in italics listed below followed by an analysis of the change:

"A survey of raptor nests will be conducted in the immediate area of mining/coal extraction planned for each year and proposed expansion areas to obtain base line data. ~~Raptor nest surveys will be conducted annually in the Spring prior to mining activities or potential subsidence within the permit area.~~ In addition, raptor nest locations will be monitored/surveyed the year following the first monitoring/survey if nests were observed during the survey and if operations result in subsidence. No survey will be preformed in areas where the DWR has previously inventoried and no nests were found or nests have been determined inactive or were not surveyed. Raptor survey information will be placed in the confidential folders of the M&RP..."

Surveys for golden and Bald Eagles are usually conducted in the spring when raptors are present in the area and nesting. The M&RP needs to include the time period the surveys will be conducted. Surveys should be conducted for nests that could be impacted including nests that are "inactive" because, based on eagle behavior, nests could become active in the future. Nests that could be impacted that were "not surveyed" by DWR still need to be surveyed in future years by the Permittee. Nests can be impacted in the following ways: If they are in active subsidence zones (any area that is still being monitored for subsidence) or if they are within ½ mile of surface disturbances.

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"The area was included in the areas requested to be surveyed by the DWR during the 2006 and 2007 raptor surveys. Raven nests were the only nests active during the 2007 survey of the leased areas. ~~A raptor survey of the leased areas will continue on an annual basis until mining in the area is discontinued.~~"

"The 40 acres was included in the 2006 raptor survey performed by the DWR. ~~And will continue to be included on an annual basis until mining in the area is discontinued.~~"

Nest # 9, a golden eagle nest, is located directly over the Federal Coal Lease U-07064-027821 and was active in 2006 and tended in 2007. Raptor surveys must continue annually for any nest that could be impacted by subsidence or is within ½ mile of any surface disturbance, which includes Federal Coal lease U-0064-027821 and State Lease ML-50582-OBA.

"The nests in Section 16 ~~will be~~ were monitored in the annual raptor survey (1998-2008). ~~Nine months or the summer prior to the period of potential subsidence a determination by SCM, UDWR (Fish and Wildlife) and UDOGM will be made as to the method(s) to be used for the protection of the nest(s).~~"

In 2007, nest # 28, located in Section 16 was reported by DWR as an active Golden Eagle nest. Subsidence has ceased in section 16 and the Permittee is no longer required to monitor for nests in this area because no impact should occur to existing nests.

"Section 22, T13S, R12E contains a raven nest and an active Golden Eagle nest...This golden eagle nest ~~will most likely continue to be~~ was not active from 2004 through 2008, although it showed signs of being tended in 2004 and 2005. ~~active. The plan to protect the nesting birds will include a survey of the nest location the year prior to second mining to determine activity. In addition, the potential for laying, incubation or existence of young will be evaluated. The spring prior to the period of potential subsidence a determination by SCM, UDWR (Fish and Wildlife) and UDOGM will be made as to the method(s) to be used for the protection of the nest(s) (see Section 333.300).~~"

Section 22 includes an area that will be mined in the future. Subsidence can occur in the area directly beneath the golden eagle nest during mining. The Permittee will continue to uphold their commitment to survey the nest location the year prior to mining and consult with the Division and other agencies to determine the protection of the nest(s) according to updated information on page 3-20.

"Refer to Section 322.200 for information and commitments pertaining to raptor surveys. ~~Areas of potential mining will be surveyed for raptor nests prior to the beginning of mining and two seasons after mining has ceased. Pertinent data gathered in these surveys~~

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~~*will be included in this M&RP and evaluated by qualified personnel to determine the method(s) to be used to avoid, protect, or take the raptor's nests(s)."*~~

All areas with raptor habitat (such as cliffs or mature trees) that may be subsided must be inventoried for raptor nests. If a nest is found, the Permittee will consult with the Division to determine protection or mitigation efforts according to the updated information on page 3-20.

"A ground nest survey for raptors and bird species of special interest was performed in 1998 prior to site disturbance by a qualified person."

This change is just a clarification of the date the survey was conducted. The survey is found in Appendix 3-3.

Revision to M&RP- Confidential Folder Appendix 303 of Chapter 3:

The Permittee submitted an amendment to the Division to incorporate a letter from Bill Bates, Regional Supervisor for DWR, into Appendix 3-3. The letter states that the DWR will no longer conduct raptor surveys, and a qualified consultant should complete the surveys in the future. The Permittee also included for incorporation into Appendix 3-3 the 2008 raptor survey results in list form.

Revision to Refuse Pile Amendment Chapter 3: The changes submitted by the Permittee are in italics listed below followed by an analysis of the change:

"A one-half mile area around the refuse pile permit area will be surveyed as part of the 2003 raptor survey and each year thereafter until 2008. In the six years of surveys by the DWR no raptor nests have been located within one-half mile of the refuse pile, therefore the survey will be considered finished with the 2008 survey. ~~Until mining activities are completed.~~"

No raptor nests have been located within 1 mile of the Refuse pile in any year. The surface facilities are constructed and in operation, therefore, if nesting does occur near the site, the raptor "chose" to nest near the activity. However, if new construction is necessary during the raptor exclusionary period (Feb 1- July 15), the Permittee should survey for raptors prior to initiation of construction. It is not necessary for the Permittee to continue monitoring this area for raptors. If a raptor is spotted, the Permittee needs to notify the Division.

Revision to Degassification Well Amendment, Chapter 3: The changes submitted by the Permittee are in italics listed below followed by an analysis of the change:

"Raptors- A survey of raptor nests will be conducted in the immediate area of the well pads each year that the wells are in operation, except in areas where the DWR has previously inventoried and no nest were found or nests have been determined inactive or

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were not surveyed. Raptor survey information will be placed in the confidential folders of the M&RP."

Any nests that could be impacted by the well pads need to be surveyed. Impact includes visual disturbance from surface activities, therefore any nest located in at least ½ mile buffer around the well pads needs to be surveyed. Nests need to be surveyed regardless of "inactive" or "not surveyed" status given by the DWR.

~~*"A raptor survey will be conducted of the well site areas, each year that the wells are in operation."*~~

This information was deleted because it was moved to page 3-6. Page 3-6 includes information on raptor surveys.

Findings:

Information provided in the Chapter 3 Raptor survey revisions is not considered adequate to meet the minimum R645-301-300's section of the regulations. Prior to approval the Permittee must provide the following in accordance with:

R645-301-322, -333, -342, -358:

*Regarding the change on page 3-20 of the M&RP, second full paragraph, surveys should be conducted on all areas containing suitable raptor habitat that could be affected by subsidence or surface disturbances. Surveys need to include **all** nests previously identified by the DWR **regardless** of "inactive" or "not surveyed" status **if** the nest(s) are within an active subsidence zone or adjacent to active surface disturbance (at least ½ mile). The surveys must be conducted in the spring in order to record activity, and **prior** to potential subsidence in order for the Permittee to consult with the Division to determine a protection plan if a nest could be subsided. Please include this information in the raptor survey description.*

Regarding the Change on Page 3-4 of the Refuse Pile Amendment, in the event that new construction is necessary and will occur during the raptor exclusionary period, a survey must be conducted prior to construction in order for the Division to assist in creating a protection or mitigation plan if an active nest is found.

Regarding the change on page 3-6 of the Degassification Well Amendment, the surveys need to include the areas adjacent to the well pads (at least ½ mile) because of the visual and audible disturbance associated with the wells. The survey must include nests that the DWR previously listed as "inactive" or "not surveyed" if the nests are within ½ mile of the operating wells.

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RECOMMENDATIONS:

The amendment cannot be approved until the Permittee addresses the above deficiencies.

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